



Australian Capital Territory

Crimes (Police Powers and Firearms Offence) Amendment Act 2017

A2017-45

An Act to amend the *Crimes Act 1900*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Crimes (Police Powers and Firearms Offence) Amendment Act 2017*.

2 Commencement

- (1) Sections 3, 4 and 5 commence on the day after this Act's notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) The remaining provisions commence 3 months after this Act's notification day.

3 Legislation amended

This Act amends the *Crimes Act 1900*.

**4 Offences against Act—application of Criminal Code etc
Section 7A, note 1**

insert

- s 28B (Discharging firearm at building or conveyance)

5 New section 28B

insert

28B Discharging firearm at building or conveyance

- (1) A person commits an offence if the person recklessly discharges a firearm at a building or conveyance.

Maximum penalty: imprisonment for 10 years.

- (2) In this section:

building includes—

- (a) part of a building; or
(b) a mobile home, caravan, tent or other temporary structure.

conveyance includes an aircraft, vehicle or vessel.

firearm includes an airgun and air pistol.

6 New division 10.4A

insert

Division 10.4A Crime scene powers**210A Definitions—div 10.4A**

In this division:

crime scene means a crime scene established under section 210E.

crime scene power means a power exercisable by a police officer under section 210G.

private premises means premises other than a public place.

Note Premises includes a place or conveyance (see s 185).

serious offence means—

- (a) an offence punishable by imprisonment for 5 years or longer; or
- (b) an offence arising out of the use of a motor vehicle that has resulted in the death or serious injury of a person; or
- (c) a family violence offence within the meaning of the *Family Violence Act 2016*; or
- (d) an offence in another jurisdiction that would be a serious offence if committed in the ACT.

210B Meaning of *public place*—div 10.4A

- (1) In this division:

public place means—

- (a) public unleased land; or
- (b) premises to which the public, or a section of the public, has access, whether by payment or not.

Examples—public place

- public library or cultural institution
- government school or educational facility
- public hospital or medical centre
- vehicle used for public transport
- public park or nature reserve

Note 1 **Premises** includes a place or conveyance (see s 185).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) However, *public place* does not include—
- (a) public unleased land that a person is authorised to use under a public unleased land permit; or
 - (b) other premises that a person is authorised to use as a residence or for another private purpose.

Examples—premises authorised for private purpose

- retail shop
- restaurant or hotel
- private hospital or medical centre
- private school or educational institution
- place of worship

- (3) In this section:

public unleased land—see the [Public Unleased Land Act 2013](#), section 8.

public unleased land permit—see the [Public Unleased Land Act 2013](#), section 40.

210C Establish crime scene—public place

A police officer may establish a crime scene at a public place if the police officer—

- (a) reasonably suspects that an offence punishable by a term of imprisonment has been or is being committed at the place or somewhere else within or outside the ACT; and
- (b) considers that it is reasonably necessary to immediately establish a crime scene at the public place to protect or preserve evidence relating to the offence.

210D Establish crime scene—private premises

- (1) A police officer may establish a crime scene at private premises if—
 - (a) the police officer reasonably suspects that an offence punishable by a term of imprisonment has been or is being committed at the premises or somewhere else within or outside the ACT; and
 - (b) the police officer considers that it is reasonably necessary to immediately establish a crime scene at the premises to protect or preserve evidence relating to the offence; and
 - (c) consent has been given by—
 - (i) if the premises are occupied—the occupier of the premises; or
 - (ii) if the premises are not occupied—the owner of the premises.
- (2) However, a police officer may establish a crime scene at private premises without consent if—
 - (a) the police officer reasonably suspects that the offence is a serious offence; and
 - (b) the police officer—
 - (i) has made reasonable attempts to obtain the consent of—
 - (A) if the premises are occupied—the occupier of the premises; or
 - (B) if the premises are not occupied—the owner of the premises; or
 - (ii) considers that it is reasonably necessary in the circumstances to establish a crime scene without consent.

- (3) In seeking the consent of the owner or occupier of the premises, the police officer must tell the owner or occupier—
 - (a) if reasonably appropriate in the circumstances—the offence to which the crime scene relates; and
 - (b) the expected duration of the crime scene.
- (4) If the police officer establishes the crime scene at the premises without consent, the officer must take reasonable steps to tell the owner or occupier—
 - (a) that a crime scene has been established at the premises; and
 - (b) if reasonably appropriate in the circumstances—the offence to which the crime scene relates; and
 - (c) the expected duration of the crime scene.
- (5) For subsections (3) (a) and (4) (b), it is enough that the offence be described in general terms and it is not necessary to describe the offence precisely or using technical language.

210E When crime scene established

- (1) A crime scene is established at a place when—
 - (a) if it is reasonably necessary to immediately start exercising crime scene powers at the place—a police officer starts exercising the crime scene powers; or
 - (b) in any other case—a police officer makes a record that a crime scene is established at the place.
- (2) If a crime scene is established under subsection (1) (a), a police officer must make a record about the establishment of the crime scene as soon as practicable after it is established.

- (3) The record must include—
 - (a) the day and time the crime scene is established; and
 - (b) the place where the crime scene is established; and
 - (c) the reason for establishing the crime scene.

210F Senior police officer to be told about crime scene

- (1) As soon as practicable after a police officer establishes a crime scene, the police officer must tell a senior police officer that the crime scene has been established.

- (2) In this section:

senior police officer means a police officer of or above the rank of sergeant.

210G Crime scene powers

- (1) This section applies to a place while a crime scene is in effect at the place under section 210H.
- (2) A police officer may exercise any of the following powers if it is reasonably necessary to immediately exercise the power to protect or preserve evidence relating to the offence:
 - (a) enter the place, or any part of the place;
 - (b) enter any other premises to access the place;
 - (c) control the movement of people or things at the place;
 - (d) direct a person at the place to give the police officer the person's name and home address;
 - (e) if the police officer reasonably suspects a person possesses evidence removed from the place or has interfered with evidence at the place—detain, and conduct a frisk search or ordinary search of, the person;

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- (f) do any of the following in relation to all or part of a thing that might reasonably be evidence relevant to the commission of an offence:
 - (i) cover the thing at the place;
 - (ii) move the thing within the place;
 - (iii) photograph and in any other appropriate way record the thing before anything is done with the thing under subparagraphs (i) or (ii);
 - (g) if the place is a conveyance—remove the conveyance from its original location and take it to a secure place.

Examples—par (c)

- 1 direct a person not to enter or to leave the place
- 2 remove a person or thing from the place, or direct another person to remove the person or thing
- 3 prevent a person from interfering with or removing evidence from, or otherwise obstructing an investigation at, the place

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) A power under subsection (2) includes the power to use reasonable and necessary force to do those things.

210H Crime scene—duration

- (1) A crime scene takes effect when it is established at a place under section 210E and continues in effect until the earliest of the following has occurred:
 - (a) if the crime scene is established at private premises—6 hours have elapsed;
 - (b) if the crime scene is established in relation to a conveyance moved under section 210G (2) (g)—48 hours have elapsed;

- (c) the consent of the owner or occupier of the premises under section 210D (1) to establish the crime scene (other than in relation to a serious offence) is withdrawn;
 - (d) a police officer starts executing a warrant to search the place;
 - (e) an application for a warrant to search the place is refused;
 - (f) it is no longer reasonably necessary to protect or preserve evidence at the place in relation to the offence.
- (2) However, a period of time mentioned in subsection (1) (a) or (b) does not apply to a crime scene if the owner or occupier of the place consents to the crime scene continuing in effect after the period of time.

210I Crime scene—frequency

- (1) A crime scene must not be established at private premises in relation to an offence more than once in a 24-hour period.
- (2) However, a crime scene may be established at private premises for a second or subsequent time in a 24-hour period if the crime scene is established in relation to another offence arising out of a different course of conduct.

210J Crime scene obligations—all places

- (1) This section applies if a police officer—
- (a) gives a person a direction under section 210G (2) (c) or (d); or
 - (b) proposes to detain and search a person at a place under section 210G (2) (e).
- (2) The police officer or another officer must—
- (a) tell the person—
 - (i) that a crime scene has been established; and

- (ii) if appropriate in the circumstances—the offence to which the crime scene relates; and
 - (b) if a direction is given to the person—give the person a reasonable opportunity to comply with the direction.
- (3) For subsection (2) (a) (ii), it is enough that the offence be described in general terms and it is not necessary to describe the offence precisely or using technical language.

210K Crime scene obligations—conveyances

- (1) This section applies if a conveyance is removed from its original location and taken to a secure place under section 210G (2) (g).
- (2) A police officer must take reasonable steps to tell the owner of the conveyance—
 - (a) that a crime scene has been established; and
 - (b) that the conveyance has been removed from its original location; and
 - (c) the secure place to which the conveyance has been taken.

210L Offence—fail to comply with direction

- (1) A person commits an offence if the person—
 - (a) is given a direction by a police officer under this division; and
 - (c) fails to comply with the direction.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant was not given a reasonable opportunity to comply with the direction.

Note The defendant has a legal burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 59).

210M Review—div 10.4A

- (1) The Minister must review the operation of this division as soon as practicable after the end of its first year of operation.
- (2) The Minister must present a report of the review to the Legislative Assembly within 6 months after the day the review is started.
- (3) This section expires 3 years after the day it commences.

7 Dictionary, new definitions

insert

crime scene, for division 10.4A (Crime scene powers)—see section 210A.

crime scene power, for division 10.4A (Crime scene powers)—see section 210A.

private premises, for division 10.4A (Crime scene powers)—see section 210A.

8 Dictionary, definition of *public place*

substitute

public place—

- (a) for part 9 (Exclusion powers)—see section 174; or
- (b) for division 10.4A (Crime scene powers)—see section 210B.

9 Dictionary, definition of *serious offence*, new paragraph (aa)

insert

- (aa) for division 10.4A (Crime scene powers)—see section 210A; and

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 31 October 2017.

2 Notification

Notified under the [Legislation Act](#) on 7 December 2017.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Crimes (Police Powers and Firearms Offence) Amendment Bill 2017, which was passed by the Legislative Assembly on 28 November 2017.

Clerk of the Legislative Assembly

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